be taken for the pension to be paid to him.

It might perhaps be useful and appropriate to elaborate somewhat on the use of the term 'Government' around which the nub of the appellant's contention on this point revolves by referring to the decision of the House of Lords in *Town Investments Ltd. & Ors.* v. *Department of the Environment*[8] when, in discussing the relationship of the Queen acting in a political capacity and the administration, the House held *per curiam*: 'It is not private but public law that governs the relationships between Her Majesty the Queen acting in her political capacity, the government departments among which the work of Her Majesty's government is distributed, the ministers of the Crown in charge of the various departments and civil servants of all grades employed in those departments. To speak nowadays of "the Crown" as doing legislative or executive acts of government, which, in reality as distinct from legal fiction, are decided on and done by human beings other than the Queen herself, involves risk of confusion. It would be better, instead of speaking of "the Crown," to speak of "the government" — a term appropriate to embrace both collectively and individually all of the ministers of the Crown and parliamentary secretaries under whose direction the administrative work of government is carried on by the civil servants employed in the various government departments. Executive acts of government that are done by any of them, in the name of Her Majesty or under their official designation, are acts done by "the Crown" in the fictional sense in which that expression is now used in English public law.' We would particularly refer to the opinion of Lord Simon of Glaisdale (at page 397) when he said: "'Her Majesty' in constitutional legal usage thus generally personifies the powers of 'the Crown' — powers the nucleus of which legally and historically are those of The Queen, but which by constitutional convention (i.e., in political reality) are exercised in the name of The Queen by those who are nominally and legally her servants or agents."

When we speak of the Government, we refer to His Majesty's Government which includes His Majesty the Yang di-Pertuan Agong and of which he is the constitutional head. The reference therefore to the 2nd respondent in the letter of October 13, 1971 is sufficiently comprehensive to manifest the Yang di-Pertuan Agong's participation in the decision made and would appear to be no more than a composite term to intimate the exercise by the Yang di-Pertuan Agong of his powers under section 10 of the Pensions Ordinance on ministerial advice, and the communication by the 1st respondent of the decision so made by the 2nd respondent is only indicative, to use the words of Brightman J., in *In re Golden Chemical Products Ltd.*[9] (at page 307), applying the law as explained by Lord Greene M.R., in *Carltona, Ltd.* v. *Commissioners of Works & Ors.*[10] (at page 563), of 'a devolution of power — delegation is the wrong word'. In *Lim Lian Geok* v. *The Minister of the Interior, Federation of Malaya*[11] it was accepted before the Privy Council that a notice of intended deprivation of citizenship was not in any way invalid because it was signed by the Registrar-General of Citizens and the contention that there had been a delegation by the Minister was abandoned; these were points of argument taken unsuccessfully in the courts below.

We cannot but reject in the circumstances the argument advanced that the Yang di-Pertuan Agong did not in fact require the appellant to retire from the public service on the termination of his employment in the public interest under section 10(d) of the Pensions Ordinance.

In any event, even assuming for a moment for the sake of argument that the termination of the appellant's service involves any punitive element or can be impugned on the basis of the contentions advanced, but we find it does not and cannot, the position is covered by the further proviso inserted in Article 135(2) of the Constitution on December 31, 1978 and made effective retrospectively as from August 31, 1957 to the effect that the termination of the service of a public officer in the public interest does not constitute dismissal on the grounds relied on by the appellant. This proviso would accordingly, if the appellant had any just cause for complaint, deprive him of any relief or remedy.

In the premises and for the reasons we have given, we dismiss this appeal with costs. The deposit in court by way of security will go to the respondents to account of their taxed costs.

Appeal dismissed.

Solicitors: *Kean Chye & Sivalingam.*

PEMUNGUT HASIL TANAH, KOTA TINGGI v. UNITED MALAYAN BANKING CORPN. BHD.

[F.C. (Wan Suleiman, Salleh Abas FJJ. & Abdoolcader J.) August 11, 12 & 25 1981]

[Kuala Lumpur — Federal Court Civil Appeal Nos. 57 & 59 of 1979]

Land Law — Alienated land — Non payment of rent by proprietor — Forfeiture — Application to set aside forfeiture — Equitable relief — Compensation — National Land Code, ss. 97(1), 98(1), 100, 130(1), 133(1), 134 & 418(2).

Civil Law — Civil Law Act, 1956, ss. 3(1) & 6.

Sometime in December 1966, the State Authority of Johore alienated some 20.688 acres of land in Kota Tinggi, Johore, to Johore Sugar Plantation & Industries Bhd. (company) for a term of 99 years at a yearly rent. The company developed the land as a sugar-cane plantation and integrated sugar refinery. The company charged the land to the United Malayan Banking Corporation Bhd. (bank) to secure banking facilities totalling some $5 million with interest thereon.

The company defaulted in the payment of the rent to the State Authority for the year 1977. The Collector of Land Revenue (collector) gave notice in the prescribed form under section 97(1) of the National Land Code (Code) to the company to pay the rent within 3 months from the date of the notice. A copy of this notice was served on the bank as required by section 98(1) of the Code. As the company and the bank did not comply with this notice, the collector declared the land forfeited to the State Authority under section 100 of the Code. A notification of forfeiture was published in the *Government Gazette* on September 15, 1977.

The company applied to the State Authority on November 17, 1977 for annulment of the forfeiture. This was refused by the collector. Following this, both the company and the bank applied to avoid the forfeiture by way of appeals under section 418 of the Code on the ground that

the forfeiture was "harsh and inequitable". The appeals were heard by the then Chief Justice who set aside the forfeiture upon the company paying within 6 months all rents due and any moneys imposed by way of penalty (see [1979] 2 M.L.J. 202). In compliance with the order of the then Chief Justice, the bank paid to the collector the sum of $434,285 being the arrears of rent and other fees for 1977, 1978 and 1979. The collector, meanwhile, appealed to the Federal Court against the order setting aside the forfeiture made by the then Chief Justice. On appeal, it was contended that:—

(a) the acceptance of the arrears of rent and concomitant sums by the collector constituted a waiver of the forfeiture;

(b) as the order of the collector under section 100 directing the land to be forfeited to the State Authority was not produced to the court below, the forfeiture was wholly vitiated;

(c) the notice under section 97(1) in the prescribed form (Form 6A) was invalid as the amount therein stated was in excess by some $6,000.00;

(d) that the company and the bank were entitled to equitable relief as section 418 of the Code stipulates that the court shall make such order as it considers just;

(e) that the collector be required (in connection with the company's claim in the alternative) to pay compensation to the company for the forfeiture of the company's land.

Held: (1) as the operation of the order (by the then Chief Justice) resulted in the forfeiture being set aside if payment was made within 6 months, there was no question of any waiver of the forfeiture as there was nothing to waive because the payment was in compliance with the terms of the order. In any event the collector had no power to effect a waiver and any purported act on his part cannot in law be the subject matter of waiver or estoppel against the State Authority. There cannot be any waiver of a forfeiture once it has been effectively completed;

(2) there is no requirement that the order under section 100 of the Code should be produced and there was on record the uncontroverted statement by the State Legal Adviser, Johore, made in the court below that the collector made an order under section 100 on September 7, 1977 and the notification of forfeiture was published in the *Government Gazette* on September 15, 1977;

(3) the excess as alleged was wholly minimal when viewed against the total amount payable to the State Authority and if there was any irregulariy as alleged there was no reason to disturb the findings of the then Chief Justice in view of section 134(2) of the Code;

(4) the relevant provisions of the Code provide a complete Code regulating the respective rights and liabilities of the State Authority and the registered proprietor of alienated land in relation to the rent payable and no recourse can legitimately be had to look beyond their specific terms to seek any relief for the alleviation of any complaint or hardship. The Code does not contemplate any power or right in the court to grant equitable relief against forfeiture in the light of the specific provisions of the Code;

(5) the claim for compensation should be dismissed as it could not be sustained under the Code.

[Editorial Note: Both the company and the Bank have applied for leave to appeal to His Majesty the Yang di-Pertuan Agong.]

Cases referred to:

(1) *Earl of Darnley* v. *London, Chatham & Dover Rly. Proprietors* (1867) L.R. 2 H.L. 43, 57.

(2) *Jardine* v. *Attorney-General for Newfoundland* [1932] A.C. 275, 289.

(3) *Jones* v. *Carter* (1846) 15 M. & W. 718; 153 E.R. 1040, 1043.

(4) *Doe d. Morecraft* v. *Meux* 1 C. & P. 346.

(5) *James* v. *Young* (1884) 27 Ch. D. 652, 662-663.

(6) *Davenport* v. *The Queen* (1877) 3 App. Cas. 115.

(7) *Pow Hing & Anor.* v. *Registrar of Titles, Malacca* [1981] 1 M.L.J. 155, 159, 160.

(8) *East Union (M) Sdn. Bhd.* v. *Government of the State of Johore & Government of Malaysia* [1981] 1 M.L.J. 151, 154.

(9) *Magor and St. Mellons Rural District Council* v. *Newport Corporation* [1952] A.C. 189.

(10) *Cartledge* v. *E. Jopling & Sons Ltd.* [1963] A.C. 758.

(11) *Diamond Peak Sdn. Bhd. & Anor.* v. *Tweedie* [1980] 2 M.L.J. 31, 37.

(12) *Siah Kwee Mow & Anor.* v. *Kulim Rubber Plantations Ltd.* [1979] 2 M.L.J. 190, 201.

(13) *Midland Bank Trust Co. Ltd. & Anor.* v. *Green* [1981] 2 W.L.R. 28, 32, 33, 35.

(14) *Mookapillai & Anor.* v. *Liquidator, Sri Saringgit Sdn. Bhd.* [1981] 2 M.L.J. 114.

FEDERAL COURT.

P.W. Medd Q.C., Alauddin bin Dato Mohamed Sheriff (State Legal Adviser, Johore) and *C.K.G. Pillay* for the appellant.

T.R. Hepworth and *Wong Kim Fatt* for the respondent in F.C.C.A. 57/79.

R.R. Chelliah and *P.S. Gill* for the respondent in F.C.C.A. 58/79.

Cur. Adv. Vult.

Abdoolcader J. (delivering the judgment of the Court):

THE CRUCIAL ISSUE INVOLVED

Has the court jurisdiction to grant equitable relief against the forfeiture of alienated land effected under the National Land Code, 1965 in the face of its express enactment? That is the basic issue arising for consideration and determination in these two joint appeals involving the forfeiture of a substantial parcel of land to the State Authority of Johore for non-payment of land rent. As we are primarily concerned in this matter with the provisions of the National Land Code ('the Code'), to obviate tautology all statutory references in this judgment will be to the Code unless otherwise specifically indicated.

EXORDIUM: EPITOME OF EVENTS

In December 1966 some 20,680 acres of land in the District of Kota Tinggi, Johore, were alienated under section 76 by the State Authority of Johore to Johore Sugar Plantation & Industries Bhd. ('the company') as registered proprietor for a term of 99 years and were then charged by the company to United Malayan Banking Corporation Bhd. ('the bank') to secure banking facilities under three charges, the amount outstanding in respect thereof in November 1977 being over $5 million carrying further interest. The company alleges it has expended some $18 million to develop the land as a sugar-cane plantation and an integrated sugar refinery.

The affidavits filed disclose that the rent payable under section 76(b) as consideration for the alienation and due to the State Authority for the year 1977 was not paid although the arrangement between the company and the bank appears to have been that if the former was unable to make payment it should then refer to the latter, but it did not do so notwithstanding the statutory notice of demand in Form 6A issued and caused to be served on the company by the Collector of Land Revenue, Kota Tinggi ('the Collector') under the provisions of section 97(1) and the fact that the company had previously assured the bank

that it would be able to raise the necessary funds for this purpose within the period stipulated in the Collector's notice. The Collector had also simultaneously by reason of the provisions of section 98(1) caused to be served on the bank as chargee a copy of the notice in Form 6A to which was appended the additional notice set out in the supplement thereto.

As there was no compliance with the notice in Form 6A by either the company or the bank within the stipulated period of three months, the Collector in accordance with section 100 by an order made on September 7, 1977 declared the land forfeit to the State Authority, bringing into operation as a result the provisions of Part Eight in Division III of the Code. The Collector accordingly published in the State Government *Gazette* a notification of forfeiture in Form 8A under section 130(1) on September 15, 1977 whereupon the forfeiture took effect with the consequences enacted in section 131. The company applied to the State Authority on November 17, 1977 for the annulment of the forfeiture under section 133(1) but this was refused by a letter dated November 29, 1977 as indeed the State Authority was entitled to do as the matter was one of its absolute discretion under subsection (2) of that provision.

The bank then applied to avoid the forfeiture under section 134(1) by way of an appeal under section 418 and took out a motion for this purpose on December 7, 1977 on the ground, as set out in a supporting affidavit, that it sought 'the discretion and sympathy' of the court to set aside the forfeiture which it contends is harsh and inequitable. We should perhaps add that the motion did not comply with the provisions of section 418(2) and Order 59 rule 13 of the Rules of the Supreme Court, 1957 which specifically require the grounds of appeal to be set out in the motion but no point was taken by the Collector on this, and furthermore it was only at the hearing of the motion that the bank raised the question of the purported invalidity of the notice in Form 6A under section 97(1) on a contention that the sum demanded therein was in excess of the sum due by some $6,000. The company took out a similar motion on December 14, 1977 by way of appeal under section 418 on the same ground in its supporting affidavit as that of the bank but then applied by motion on September 26, 1978 to amend its original motion and obtained an order accordingly on November 2, 1978 to add to its claim a prayer in the alternative that the Collector be required to pay compensation to the company.

The two appeals were heard jointly on December 7, 1978 by Tan Sri S.S. Gill (then Chief Justice) and in a reserved judgment delivered on March 6, 1979, acceding to the contention that equitable relief against the forfeiture could be granted by the court but, we should perhaps add, without considering and indeed wholly disregarding the specific provisions of section 134(2), he ordered that the forfeiture be set aside upon the company paying within 6 months all the rent due and any money payable by way of penalty. The Collector immediately on that very day filed notices of appeal to this court against that decision.

THE BANK'S MOTION TO DISMISS THE APPEAL

It is necessary in the first instance to deal with a preliminary application by the bank to dismiss the appeal by the Collector *in limine*, and this was brought about by what transpired after the learned Chief Justice's order of March 6, 1979. The bank's solicitors made enquiries of the Collector in May 1979 as to the sums payable for rent and penalty for 1977, 1978 and 1979 to enable the bank to make payment under the order of court, and on being informed of the total sum due therefor the bank paid and the Collector accepted on September 5, 1979 the arrears of rent, education rate, penalty fee and notice fee for 1977 and the rent for 1978 and 1979 in the aggregate sum of $434,285. On September 17, 1979 the Collector applied to the High Court for a stay of execution and other proceedings in this matter pending the final disposal of the appeals to this court and an order was made to this effect on October 14, 1979. The bank now contends that the acceptance of the arrears of rent and concomitant sums for 1977 and the rent for 1978 and 1979 constitutes a waiver of the forfeiture by the Collector and took out a motion on October 15, 1980 for the dismissal on this ground of the appeal before us in respect of its motion under section 418.

The learned Chief Justice specifically ordered that the forfeiture be set aside upon the company paying all the rent and penalty due and payable although the appeals against the forfeiture were by both the bank and the company and were heard together. It is true that a person or body whose interest in the land is affected is entitled under section 98(1) to pay the sum demanded by any notice under section 97(1) but this right only accrues before a forfeiture has been declared under section 100, and indeed the right to apply to the State Authority to annul any forfeiture so effected is restricted by section 133(1) to the registered proprietor of the land immediately preceding the forfeiture and does not enure to any other person or body however affected or aggrieved. In this case the bank made the payment purportedly pursuant to the order of court and the Collector in accepting the payment so made also purported to act in accordance with the order of court against which he had lodged notices of appeal on the very day it was made and which is the very subject-matter of the appeals before us. The payment was therefore made by and accepted from the wrong entity and not in consonance with the specific requirement of the order for payment by the company. If in the face of the tenor of the order of March 6, 1979 the Collector had refused to accept the payment tendered by the bank he might well perhaps have had qualms as to his liability for contempt of court and he would seem to have lost no time thereafter in applying for a stay.

As the operation of the order resulted in the forfeiture being set aside if payment was made within 6 months, there was no question of any waiver of the forfeiture as there was nothing to waive when the forfeiture was seemingly no longer extant, having been set aside once there was payment in compliance with the terms of the order. In these circumstances moreover as the Collector purported to act under and comply with the order of court it can hardly be said that the waiver was intentional and it is trite law that 'a waiver must be an intentional act with knowledge'

(*Earl of Darnley* v. *London, Chatham & Dover Railway Proprietors*[1] (at page 57 *per* Lord Chelmsford L.C.).

In any event we cannot see how there can be any waiver once the forfeiture has been completed by the operation of the requisite provisions of the Code. After the forfeiture in this case was effected in accordance with the provisions of section 100 and took effect on September 15, 1977 upon the publication of the notification of forfeiture in Form 8A under section 130(1) with the consequences specified in section 131, no question of waiver can come in or arise. The Privy Council held in *Jardine* v. *Attorney-General for Newfoundland*[2] (at page 289) that in the case of a forfeiture clause, acceptance of rent after a known breach of a covenant or condition is not waiver of the covenant or condition or some part thereof, but waiver of the right to forfeit which has arisen from the breach. In *Jones* v. *Carter*,[3] Parke B., in a case of a forfeiture of a lease by a declaration in ejectment by a lessor which determined the term, said (at page 1043) that if once rendered void, the lease could not again be set up, concurring with what he termed the clear opinion expressed by Lord Tenterden in *Doe d. Morecraft* v. *Meux*[4] that the receipt of rent after an ejectment brought for a forfeiture was no waiver of such forfeiture. We would also refer in this connection to *James* v. *Young*[5] (at pages 662-663). If at all then waiver can be asserted, it must necessarily be of the right of forfeiture and cannot be of the forfeiture itself after it has taken effect, and the provisions of sections 127(2), 128(3) and 129(5) relating to liability to forfeiture for breach of condition of title and which refer to waiver of the right of forfeiture clearly substantiate this. In *Davenport* v. *The Queen*[6] too, which counsel for the bank seeks to rely on, the main questions involved were, first, whether a Crown lease granted under and pursuant to the provisions of statute ever became liable to be forfeited, and next whether, assuming that it had become so liable, the right of forfeiture had not been waived.

Assuming for a moment, however, for the sake of argument the abstract possibility of waiver, the matter then resolves into the question as to whether the Collector has power under the Code to do so. The forfeiture provisions in the Code are clear, composite and complete and section 131 stipulates the legal consequences upon a forfeiture taking effect under section 130(1). The Collector has no power to effect a waiver and any purported act on his part which might give any semblance of a suggestion to that effect cannot in law be the subject-matter of waiver or estoppel against the State Authority. As soon as the forfeiture took effect the land reverted to and vested in the State Authority as State land under section 131(a) freed and discharged from the company's and the bank's title and interest and even if the Collector himself wanted to effect a waiver there was nothing left for him to waive and no power in him to resile and do so. Any question of waiver of a forfeiture effectively completed would give rise to a situation analogous to that of pardoning a condemned criminal after the hangman's noose has done its work.

It is not surprising therefore in the light of what we have discussed that the company has not taken this point on waiver even by proxy in the matter of payment by the bank and acceptance by the Collector of the moneys in question and has not taken out any application to dismiss the appeal in relation to its own motion on this ground. We therefore for the reasons we have given dismissed the bank's motion with costs and proceeded to hear the substantive appeal.

SUBSIDIARY CONTENTIONS RAISED

Before turning to the issue which is the nub of the appeals before us, we should perhaps touch on and dispose of two subsidiary contentions raised on behalf of the bank.

First, at the outset of his argument Mr. Hepworth for the bank submits that the order of the Collector under section 100 declaring the land forfeit to the State Authority was not produced in the court below and that in the circumstances this wholly vitiates the forfeiture, referring to that part of the judgment of this court in *Pow Hing & Anor.* v. *Registrar of Titles, Malacca*[7] which held (at page 159) that there should be a separate order previously made under section 100 distinct from the notification of forfeiture in Form 8A under section 130(1). There is however no requirement that the order under section 100 should be produced and there is on record an uncontroverted statement by the State Legal Adviser, Johore, in his submission in the court below that the Collector made an order under section 100 on September 7, 1977 (and there is no suggestion by the bank or the company otherwise) and that the notification of forfeiture in Form 8A under section 130(1) was published in the *Gazette* on September 15, 1977. When we drew his attention to this Mr. Hepworth did not pursue this point any further but Mr. Wong Kim Fatt who appeared with Mr. Hepworth then stood up to say that he has since searched the register of titles and finds that the Collector's order under section 100 has not been registered on the register document of title to the land in question. We immediately pointed out to Mr. Wong that there is no requirement in the Code for an order under section 100 to be registered against the title nor any suggestion to that effect in the judgment in *Pow Hing*[7] which on the contrary indicated that the Collector need only make a simple order in the terms of that section or even perhaps make a minute to that effect in the relevant file. That disposes of this point which was raised in the absence of any notice of cross-appeal relating thereto.

Second, Mr. Hepworth raised the matter of the purported invalidity of the notice in Form 6A under section 97(1) which we have referred to in our exordial remarks and which the learned Chief Justice dismissed as not being of any substance, again without any notice of cross-appeal in this respect. The point made in the court below in this connection was that the sum demanded in the Collector's notice in Form 6A was in excess of the sum due by some $6,000 as the demand wrongly included a penalty fee on the education rate payable and also a minor difference of some $3 for the notice fee. The State Legal Adviser disputed this contention except for the minimal error in the notice fee.

The matter of the quantum in dispute was not argued before us, and the learned Chief Justice in dealing with this point did not adjudicate on it either, but on an assumption without deciding that there was an irregularity in the sum demanded as alleged, said in his judgment that the effective answer to this ground is to be found in section 134(2) which enacts that no order of the Collector under section 100 shall be set aside by reason only of any irregularity in the form or service of any notice under sections 97 and 98 unless, in the opinion of the court, the irregularity was of a significant nature. He went on to hold that the only irregularity alleged was that the amount demanded was some $6,000 more than the amount lawfully due and he did not think that that was an irregularity of any significant nature, especially in view of the fact that no representations were made to the Collector as to the amount demanded. We wholly agree with his conclusion in this respect.

Assuming without deciding that there was an excess as alleged in the amount required to be paid in the Collector's notice, the excess was wholly minimal when viewed against the total amount due and payable and the learned Chief Justice held that if there was an irregularity as alleged he did not think that it was one of any significant nature, and section 134(2) clearly states that this is a matter for his opinion which we can find no reason to disturb. It was certainly open to the company and the bank to protest against the excess and clearly indicate what they thought was the proper amount but they did not. We cannot but in the circumstances consider this as reflecting a situation where the respondents to these joint appeals can have little cause for complaint if it is suggested that they have hardly come to court to seek equity with clean hands. We therefore find no ground for complaint on this count either.

THE SUBSTANTIVE ISSUE: IS EQUITABLE RELIEF AGAINST THE FORFEITURE OF ALIENATED LAND UNDER THE CODE EXIGIBLE?

We now advert to the substantive issue, scilicet, whether equitable relief against the forfeiture of alienated land is available in the face of the specific provisions of the Code. Section 134(1) enacts that the validity of any forfeiture under the Code shall not be challenged in any court except by means of or in proceedings consequent upon an appeal under section 418 against the order of the Collector under section 100. Section 418 (so far as material for present purposes) provides for an appeal to the High Court by any person or body aggrieved by any decision of the Collector and subsection (2) thereof prescribes the procedure therefor to be in accordance with the rules of court relating thereto and enacts that the court shall make such order on the appeal as it considers just. Section 134(2) stipulates that no order of the Collector upon section 100 shall be set aside by any court except upon the grounds of its having been made contrary to the provisions of the Code or of there having been a failure on the part of the Collector to comply with the requirements of any such provision but goes on to state that no such order shall be set aside by reason only of any irregularity in the form or service of any notice under sections 97 and 98 unless, in the opinion of the court, the irregularity was of a significant nature.

The bank and the company contend that the provision in section 418(2) empowering the court on an appeal to make such order as it considers just must necessarily open the doors for the introduction of equity and allow the court to grant equitable relief against forfeiture in this case. If that were so any such exercise of power would fly in the face of section 134(2) and nullify its clearly defined restrictions, and as this court said in *Pow Hing*[7] (at page 160), an order of forfeiture can only be set aside on grounds circumscribed by the provisions of section 134(2) and then too not lightly for insubstantial cause. This enabling provision in section 418(2) for the court to make such order as it considers just can only mean that where the court has the power to grant a remedy, it also has the power to make such orders as may be necessary to make that remedy effective; it cannot be stretched to bestow or mean that the court has a general residual discretion to make any order it may think necessary in the circumstances of any particular case to ensure justice between the parties or otherwise which would transcend in *facie legis* the limits of its power to grant the remedy.

Section 3(1) of the Civil Law Act, 1956 which introduces the application of the United Kingdom common law and rules of equity in West Malaysia is subject to the saving provision with which it opens, namely, 'Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, . . .'. In relation to the matter before us which is governed by the Code this saving provision has both a positive and negative facet. On the positive aspect there is indeed power under the Code for relief against forfeiture but this is expressly and specifically provided for by section 133(1) and (2) and vested in the State Authority in its absolute discretion and not in the court and, as we have said earlier, the application by the company for the annulment of the forfeiture in this case had previously been refused by the State Authority. There is also provision under section 133(3) for the State Authority to re-alienate the land to the company at any time and that subsection provides that the refusal of any petition under section 133(1) shall not be taken to prejudice the power of the State Authority to re-alienate the land to the company, but it would appear, however, that the company has not taken any steps to apply for re-alienation.

As to the negative aspect of the saving provision in section 3(1) of the Civil Law Act there are exclusive provisions in section 134(2) which circumscribe and specifically restrict the grounds on which an order of forfeiture by the Collector under section 100 can be set aside in an appeal to the court under section 418. The restrictive provisions of section 134(2) clearly suggest that the Collector's power to effect a forfeiture can be likened, to adopt a paradigm from the criminal law, to a case of enforcing strict liability without *mens rea*.

It is therefore abundantly clear that the Code does not contemplate any power or right in the court to grant equitable relief against forfeiture in the light

of the several provisions we have adumbrated. There is no statutory provision giving such a right in marked contrast to the provisions of section 237 which relate to the grant or refusal of relief against forfeiture by the court of any lease of alienated land granted by the registered proprietor thereof to a lessee or tenant.

We should perhaps also touch on section 6 of the Civil Law Act which precludes the introduction into Malaysia or any of its States of any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein. This provision would again preclude any application of the law of England, which must necessarily in the context include the rules of equity, to the matter of forfeiture in this case which without doubt comes within the scope of the term 'tenure' in this section (*East Union (Malaya) Sdn. Bhd.* v. *Government of the State of Johore & Government of Malaysia*[8] (at page 154)).

The relevant provisions of the Code provide a complete code regulating the respective rights, duties and liabilities of the State Authority and its agents on the one hand and the registered proprietor of alienated land on the other in relation to the rent payable in respect thereof and no recourse can legitimately be had to look beyond their specific terms to seek any relief for the alleviation of any complaint of hardship. Mr. Hepworth however suggests that section 134(2) should properly be read with the interpolation of the words 'on the grounds of its being invalid in law' after its opening words 'No order of the Collector under section 100 or 129 shall be set aside' so that section 134(2) should in fact read 'No order of the Collector under section 100 or 129 shall be set aside on the grounds of its being invalid in law by any court except ....', contending, as we understand him, that this will enable the introduction of equity to mitigate the rigours of that statutory provision and the forfeiture can therefore be challenged on its validity in equity.

The short answer to this contention is that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. In *Magor and St. Mellons Rural District Council* v. *Newport Corporation*[9] the House of Lords held that in the construction of a statute the duty of the court is limited to interpreting the words used by the legislature and it has no power to fill in any gaps disclosed, and that to do so would be to usurp the function of the legislature. Where the enactment of the legislature in clear and unequivocal language is capable of only one meaning, it must be enforced however harsh the result may be, and we need only refer to *Cartledge* v. *E. Jopling & Sons Ltd.*[10] as the *locus classicus* illustrating this principle. It is hardly necessary for us to stress that it is not the function of the courts to rewrite statutes — that is a role reserved for the domain of the legislative halls.

All the authorities on equitable relief against forfeiture canvassed on behalf of the bank and the company in the court below and before us and discussed and applied by the learned Chief Justice deal with personal covenants by agreement and bargain relating to leases, tenancies, mortgages and penalties. The present proceedings, however, involve forfeiture of alienated land under statutory provisions enacted in the Code which define and regulate the relationship between the State Authority and the registered proprietor thereof; the question before us depends on statute and the provisions of Chapter 2 of Part Six and Part Eight in Division III of the Code and in particular section 134(2) preclude the court from avoiding the forfeiture effected by the Collector in the circumstances of this case.

Both Mr. Hepworth and Mr. Chelliah for the company frankly admit that they are unable to find any authority where equitable relief has been granted in respect of a forfeiture effected under a statutory provision. This absence of authority is not surprising in the circumstances, and we need only refer to what this court said in *Diamond Peak Sdn. Bhd. & Anor.* v. *Tweedie*[11] (at page 37) in regard to a situation of this sort. We find however that there is indeed authority the other way and Mr. Chelliah would appear to have overlooked proffering an identical argument in *Siah Kwee Mow & Anor.* v. *Kulim Rubber Plantations Ltd.*[12] when, in relation to the forfeiture of a substantial sum of money paid as deposit and part payment for the purchase of a rubber estate where reliance was sought on the equitable doctrine of relief against forfeiture, Abdoolcader J., held (at page 201) that this principle of the intervention of equity to relieve against forfeiture is not applicable in the face of the express and specific provisions of the Contracts Act, 1950.

It would perhaps be useful and appropriate to refer to the decision of the House of Lords on December 11 last in *Midland Bank Trust Co. Ltd. & Anor.* v. *Green*[13] where Lord Wilberforce, with whom the other Law Lords concurred, discussed (at page 32) the equitable concept of the *bona fide* purchaser but then (at page 33) posed the question as to whether this requirement passed into the English property legislation of 1925 and went on to say that he did not think it safe to seek to answer this question by means of a general assertion that the property legislation of 1922-25 was not intended to alter the law or not intended to alter it in a particular field such as that relating to purchases of legal estates, adding significantly that all the Acts of 1925 and their precursors were drafted with the utmost care and their wording, certainly where this is apparently clear, has to be accorded firm respect and cautioning against 'muddying clear waters', and (at page 35) he posited the danger of 'reading equitable doctrines (as to notice, etc.) into modern Acts of Parliament' and reaffirmed the validity of interpreting clear enactments according to their tenor. No exposition of the law could be more apposite in the context of the matter before us. None of the parties cited this case but we referred counsel to it in the course of argument and they had ample opportunity to consider it during the overnight adjournment.

In the circumstances it is our firm and considered view that no question of applying the equitable doctrine of relief against forfeiture can arise in relation to the forfeiture of the land in question by the Col-

lector under the relevant provisions of the Code, and that the only relief available in connection with the forfeiture of alienated land under the Code is threefold, namely, (a) that accorded to the precedent registered proprietor to apply to the State Authority under section 133(1) for the annulment of the forfeiture which under subsection (2) thereof the State Authority may in its absolute discretion refuse, as it did in this case, (b) for the State Authority to re-alienate the land under subsection (3) thereof, or (c) by virtue of the provisions of section 134, the right of any person aggrieved to challenge the validity of the forfeiture by way of an appeal under section 418 but only on the grounds specified in subsection (2) thereof.

Mr. Chelliah however goes even further and says that, quite apart from the provisions of section 3(1) of the Civil Law Act and section 418, the court has an inherent jurisdiction to act against what he calls unconscionable action, though we are not told how and why it was unconscionable for the Collector to comply and act in accordance with the express enactments in the Code in the matter of the forfeiture effected, and this inherent jurisdiction cannot be taken away except by the legislature by express and clear words. We only have to refer to what we have already said regarding the intervention of equity in the face of the express provisions of the Code to reject this argument. We cannot see how the courts can exercise their inherent jurisdiction to override expressly enacted legislative provisions. Mr. Chelliah did indeed seek to invoke the inherent jurisdiction of the court in relation to the defeasibility of title under the Code in *Mookapillai & Anor.* v. *The Liquidator, Sri Saringgit Sdn. Bhd. (in compulsory winding-up) & Ors.*[14] and this court in its judgment referred to 'the somewhat startling proposition that the court can set aside the transfers of the six titles under its inherent jurisdiction without telling us how this can be effected in the face of the express provisions of the National Land Code'. To countenance the injection of the inherent jurisdiction of the court into matters regulated and governed by the Code would be nothing short of negating and eradicating the very concept of certainty which the Code was enacted to introduce, reflect and preserve, and would well perhaps also evolve into reconstituting the court as a third legislative chamber.

We should perhaps also add that acceding to the plea put forward for equitable relief against the forfeiture and the exercise of the court's inherent jurisdiction in this matter would, quite apart from throwing statute to the winds, be no less than to signal a judicial imprimatur to a process of energizing a renascence of the apparition of the length of the English Chancellor's foot as the criterion for meting out equity to reactivate itself in a modern context as that of our several judges' feet! The court cannot be moved by compassion and sympathy for the bank and the company, and is bound and must abide by and apply the expressly enacted provisions of the Code.

The learned Chief Justice's order furthermore amounted in effect to an extension of the time expressly prescribed for compliance with the Collector's notice in Form 6A and virtually nullifies the purpose of the mandatory provisions of section 100 which impose a statutory duty on the Collector to declare the land forfeit if payment of the whole sum demanded has not been made by the end of the period specified in his notice under section 97(1) and debar him from even accepting a lesser amount than the sum demanded during the currency of the notice.

THE COMPANY'S ALTERNATIVE CLAIM FOR COMPENSATION

Neither Mr. Chelliah nor Mr. Medd for the Collector addressed us on the company's claim in the alternative, inserted by amendment to its original motion, that the Collector be required to pay compensation to it, and when we enquired whether he was pursuing this aspect, Mr. Chelliah, who, we should add, did not appear in the court below, said, somewhat cautiously, that he was not abandoning it but was leaving it for our consideration. We think it was wise in the circumstances not to press this point as in our view this claim for compensation has only to be stated for it to be rejected. This claim for compensation in respect of a forfeiture under the Code effected under its express provisions, if sustainable, would fly in the face of the statute and would move Collectors of Land Revenue all over the country to forgo rather than enforce a forfeiture for non-payment of rent as in almost every conceivable case a claim for compensation far in excess of and wholly disproportionate to the amount of rent outstanding and even perhaps in some instances the value of the land itself would be advanced.

It would appear from the record that this alternative claim is based on the contention that the land was originally secondary jungle and that a substantial portion has been cleared and planted with sugar-cane and some roads were built and other works carried out, with the company expending in the process some $18 million. Section 131 provides by paragraph (b) thereof that upon the taking effect in relation to any land of any forfeiture under the Code there shall vest in the State Authority to the extent specified in section 47 and without payment of compensation any buildings then existing on the land, and paragraph (a) thereof enacts that the land shall revert to and vest in the State Authority as State land, freed and discharged from all titles and interests, both subsisting and potential.

The land so reverting to and vesting in the State Authority under section 131(a) must necessarily connote the land in its improved state as at the point of time immediately preceding the forfeiture taking effect, be it tilled, filled, levelled, cleared, developed, deforested or whatever, and even if planted with Jack's beanstalk (replete with its by-products — hen and eggs of gold and all) if there were such a thing, and no question of any compensation can possibly arise. Any other construction would result in the remarkably anomalous situation under section 131 that on a reversion of the land to the State Authority, compensation would be payable for improvements to the land as such but not for any buildings erected thereon.

There was no expectation created or encouragement given by the State Authority to the company

that its title to and interest in the land alienated to it for a term of 99 years would continue definitely for the full period of that term and without restriction, as the company's tenure was at all times subject to the provisions of the Code including those relating to forfeiture for breach of condition of title and failure to pay the rent due. We would add that the indiscriminate reference to and reliance on authorities pertaining to encouragement, acquiescence and promissory estoppel in the court below in this regard without any consideration as to the context of their application and applicability in the circumstances of the case would appear to be like an exercise in attempting to fix window grilles to a drive-in movie.

THE RESULT

There can in the premises only be one possible answer to the primal question posed in these proceedings and signified in the prelude hereto — a negative one. We accordingly at the conclusion of argument allowed the two related appeals by the Collector with costs and set aside the order of the learned Chief Justice made on March 6, 1979 except that part of his order directing the bank and the company to pay to the Collector the taxed costs of their motions which now stand dismissed. We also ordered that the sum of $434,285 paid by the bank to the Collector for the years 1977 to 1979 pursuant to the order of the court below be refunded to the bank and further directed that the deposit in court by way of security be paid out to the Collector.

Appeals allowed.

Solicitors: *Allen & Gledhill; Cheang Lee & Ong.*

T. WALL & SONS LTD. & ANOR. v. RASA SAYANG ICE CREAM (sued as a firm) & ANOR.

[O.C.J. (Vohrah J.) February 6, 1980]
[Kuala Lumpur — Civil Suit No. 1540 of 1978]

Practice & Procedure — Stay of proceedings allowed on balance of convenience.

Trademarks — Claim of infringement — Defendants' application for registration — Plaintiffs' notice of opposition to said application pending — Stay of proceedings allowed.

By an agreement entered into on May 10, 1968 the first plaintiffs gave the second plaintiffs registered user rights to manufacture and sell ice-cream under their word and logo trademarks bearing the distinctive features of (i) 5 vertical stripes, (ii) an oval on the stripes, and (iii) the word "Walls" inside the oval. From 1973 the first defendant, and, subsequently from 1976, the second defendants manufactured and sold ice-cream in packages bearing an oval with the words "Rasa Sayang" bordered by designs made up of straight or curved lines. The plaintiffs alleged that the use of these trademarks by the defendants misled foreign tourists especially in Penang into mistaking the defendants' products for those of the plaintiffs as a result of which irreparable damage was suffered and continued to be suffered by the plaintiffs. The defendants claimed that their get-up with the word "Rasa Sayang" could not in any way be mistaken for that of the plaintiffs. The defendant also contended that on January 31, 1973 they had applied for registration of their words "Rasa Sayang" and their logo with the Registrar of Trade Marks, Malaysia and that their application had been accepted pending registration. On October 9, 1976 the plaintiffs had filed a notice of opposition to the defendants' application with the Registrar of Trade Marks. This application was still pending.

Held: (1) it would be unjust to decide on the merits of the case when the matter of the defendants' application was before the Registrar whose knowledge and experience in these matters should be allowed to be utilized to the full when considering the application and the objection thereto;

(2) no irreparable damage or great hardship would be occasioned to the plaintiffs if the defendants were not restrained pending the decision of the Registrar. Any steps to effect a speedy resolution of the dispute could better be taken by way of mandamus to compel a prompt decision by the Registrar and not by way of this suit which would preempt his discretion;

(3) on the balance of convenience, the interests of justice would be served by ordering a stay of all further proceedings in the action.

Case referred to:-

(1) *Berlei (U.K.) Ltd.* v. *Bali Brassiere Co. Incorp.* [1970] R.P.C. 469.

CIVIL SUIT.

C. Abraham for the first and second plaintiffs.

Darshan Singh for the first defendants.

Zakaria bin Mohamed Saad for the second defendants.

Vohrah J.: This was a notice of motion (*vide* Enclosure (15)) filed by the defendants to stay proceedings in respect of the plaintiffs' claim for alleged infringement of the plaintiffs' registered trade mark.

By an agreement entered into on May 10, 1968 the first plaintiffs, a registered English company, gave the second plaintiffs registered user rights to manufacture and sell ice-cream under their word and logo trade marks bearing the following distinctive features:—

(i) five vertical stripes;

(ii) an oval on the stripes; and

(iii) the word "Wall's" inside the oval.

From 1973 the first defendants, and, subsequently from 1976, the second defendants manufactured and sold ice-cream in packages bearing an oval with the words "Rasa Sayang" bordered by designs made up of straight or curved lines. The plaintiffs alleged that the use of these marks by the defendants misled foreign tourists especially in Penang into mistaking the defendants' products for those of the plaintiffs as a result of which irreparable damage was suffered and continued to be suffered by the plaintiffs. The defendants denied these allegations and averred that the distinctive feature of the plaintiffs' trade mark was the word "Wall's" whilst the defendants' get-up with the word "Rasa Sayang" could not in any way be mistaken for that of the plaintiffs. The defendants also averred that they had on January 31, 1973 applied for registration of their words "Rasa Sayang" and their logo with the Registrar of Trade Marks, Malaysia and that their application had been accepted pending registration. They also averred that since 1973 up to the commencement of the plaintiffs' action on May 18, 1978 they had expended large sums of money in advertisement without any action on the part of the plaintiffs to restrain them except for the filing on October 9, 1976 of a notice of opposition by the plaintiffs to the defendants' application with the Registrar of Trade Marks, that is, nearly two years after the application. This application was still pending before the Registrar. The defendants there-